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ABSTRACT

Traditionally, the focus of debate has been on what policy should be adopted. The concept of fiat, or authoritative decree or sanction, has enabled debate participants to discuss the relative merits of competing policies without deciding whether or not the policies being compared could be adopted in the real world. While, for the purposes of debate, the affirmative panel must have the power of fiat to put its plan into existence, the ability of the negative team to do the same with its policy has led to some controversy. One possible solution is to alter the current role of the debate judge. With a change in perspective, the judge would not put any policy into existence by fiat, but would decide whether, based on the arguments in the round, the agent in the resolution would take the action recommended by the affirmative team. For example, the judge would think like a federal policy maker when evaluating arguments on some federal action. Thus the judge as a specific agent creates a real world analogy that provides clear and easily articulated guidelines, limits acceptable negative arguments, and eliminates as irrelevant a number of fiat-related arguments. From all these perspectives, the position that the judge should act as the agent specified in the resolution provides a rational approach to the problems raised by the issue of fiat in academic debate. (HCD)

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The Judge As An Agent of Action: Limitations on Fiat Power

by

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The Judge As An Agent of Action: Limitations on Fiat Power

Debate theory has undergone many changes during the past decade. While there was a moderate degree of consensus among debate theorists until the end of the 1960's, the past decade has seen the influx of new theories about the nature of debate, as well as the discussion of theoretical problems raised by the theoretical and strategic developments that have emerged in the 1970's. One especially complex issue is the nature of "fiat" in debate theory. Isaacson and Branham go so far as to call the issue of fiat the "theoretical battleground of the eighties."[1] Given the importance of fiat to debate, it is important that some understanding of the concept be developed by the debate community.

Some view of fiat (or a related concept) is needed for debate to take place. Traditionally, the focus of debate has been on what policy <u>should</u> be adopted, which has meant that the issue of whether or not a policy <u>will</u> be adopted is irrelevant. Debaters have developed the concept of fiat to enable them to discuss the relative merits of competing policies without having to worry about whether or not the policies being compared could be adopted in the real world. This has shifted the emphasis away from what will be adopted toward a discussion of what policy is desirable.

The development of the concept of fiat has not been without its problems. While it is clear that, for the purposes of debate, the affirmative must have the power to fiat its plan into existence, the ability of the negative team to fiat its policy into existence has led to some controversy.[2] In addition, the nature of fiat power is unclear, and this has led to some discussion about how fiat operates in a debate round, as well as arguments about the legitimacy

of several negative arguments based upon the nature of fiat.[3]

One possible solution to the problem of fiat power is to alter the current view of the role of the judge in a debate. Rather than having the judge adopt the plan/negative policy through the use of fiat power, the judge should play the role of the agent specified in the resolution.[4] As a result of this perspective, the judge would not fiat any policy into existence, but would rather decide whether or not, based on the arguments in the round, the agent in the resolution would take the action recommended by the affirmative team. Thus, if the resolution called for the federal government to take some action, the judge would evaluate the arguments in the round based on the way that a federal policy maker would respond to the arguments.[5] This view of the role of the judge would have several desirable implications that would help resolve many of the problems that are created by the use of fiat.

The Limits of Fiat

The first implication of viewing the judge as the agent specified in the resolution is that the options available to both teams would be limited. If the judge is a federal policymaker, for example, the only options open to him/her are options to enact potential federal programs. This would mean that a negative team arguing for a state counterplan would have to prove that the counterplan will be adopted, since the action that is being advocated falls outside the jurisdiction of the judge. Inherency arguments would be limited to those programs that the federal government could adopt, or those programs that other levels of government are adopting.

The reasons behind this limitation on the policies that a negative team can advocate are fairly simple. First, it is clear that there must be some limitation on the ability of the negative team to suggest that an action should be taken. If there were no limit on the negative team, the negative team could argue for absurd positions, such as arguing that Russia should surrender to the United States, or that criminals should all be nice people, or that polution should be harmless. These positions would be ruled out by most judges as being unreasonable, but the question becomes, where should the line be drawn? If a negative team can argue that a foundation should do something without showing that they will do it, could they argue that a private company should do something, without demonstrating that they will act?[6]

There are several reasons why the ability to assume that a policy should be changed (without showing that it will be adopted) should be limited to the agent specified in the resolution. First, only actions of the agent mentioned in the resolution can be assumed to be in the judge's jurisdiction. We know that the judge has to be able to consider whether or not the plan should be adopted in order for the debate to make any sense. Thus the judge must have the ability to fiat actions at the level of government specified in the resolution. The extention of the fiat power to another level must be justified, both in terms of why fiat power should be extended to that level of action and to why it should not be expanded further.

Second, limiting fiat power to one level of government minimizes misuses of the counterplan. Allowing multiple agents to be discussed in a debate round permits a negative team to fiat a new

policy at another level of government and to discuss the merits of a policy that is topical in all other ways, except for the agent of action utilized, thus virtually opening the door for topical counterplans. For example, it would be possible for a team arguing against a case promoting integration through busing to present a counterplan promoting integration through a voucher system at the state level; turning the debate into a discussion of busing vs. vouchers, both of which would be topical if carried out at the federal level. Taken to an extreme, the negative team could make a minor change in the plan, adopt it at the state level, and turn the debate into a quible over whether or not the minor provision of the plan was desirable or not. Allowing this strategy would divert attention away from the larger issues implied in the resolution.[7]

Third, limiting the policy options to those available to one level of government is educationally sound since it approximates real world decision making. There are two types of argumentation that take place on policy. The first type of argument would attempt to discover what policy is desirable in the best of all possible worlds. The second type of argument attempts to discover which option available to an individual is the best option. The second type of argument is the type of argument that is most useful to individuals. Humans are choice making animals, who are forced to accept their limitations and to act upon those limitations. Consider the types of arguments and decisions our students face. In deciding what graduate school to go to, the issue is not, in the best of all possible worlds, where should the student go. This approach would enable students to argue that Harvard or Yale

should accept them. Instead, the student is forced to accept the actions of others as a given, and he/she is forced to decide among those options open to him/her and only those options open to him/her.[8] While there are examples of people who sit back and try to decide who is the ideal agent to perform a task, at the point that any action is converted into reality, only one agent is involved. To allow discussion of what other agents should do would allow an individual to live in a fantasy world, ignoring his/her own obligation to act in the hopes that another person beyond their control will act. While both types of argument exist in the real world, the most relevant type of argument is the argument that takes place when an individual recognizes the limits of being human and attempts to decide, not what would be the best of all possible worlds, but what option available to him/her is the most productive option. It is this type of argumentation that is reflected in the statement, if I were X, I would do Y. To extend fiat beyond one level of government, however, would destroy the opportunity to teach this way of evaluating argument, and instead promote a theoretical view of argument that has little relationship to the way decisions are made outside the debate round.

There have been many individuals who have argued that this view of fiat power is not appropriate to academic debate.[9] One problem with developing an alternative theory of fiat is developing an alternative limit to fiat power.[10] To limit fiat power to governmental action does not help much. A negative team could still counterplan with having the Russians surrender to the United States. Additionally, it is unclear where to draw the line between governmental and quasi-governmental actions. If the negative

team can fiat state action, how about local action? Can the actions of a local school board be fiated? How about a school principal? The actions of an individual teacher? Scuh an extention of fiat would do little to promote reasoned argument.

Nor does it help to allow a negative team to fiat any action discussed in the literature, since many non-governmental actions, including the change of social norms, have been discussed in articles.[11] Requiring that the negative position be "plausible"[12] does not create any standard to evaluate plausibility (obviously all of our counterplans are plausable and everyone else's counterplans are not). To argue that the counterplan cannot run counter to the motives of the agent would mean that no affirmative plan with motivational inherency could fiat their plan into being.

One objection to this view of the resolution as limiting the options open to both teams to those available to the agent specified in the resolution is that this view of fiat ignores real world argumentation. In the real world, the argument goes, people do argue over what level of government should do something. While it is true that this type of argument does go on in the real world, as I argued earlier, the type of argument involving which of the available options open to one agent should be adopted also takes place, so any theory of fiat will choose one type of real world argument over another. The issue is not what type of argument is used in the real world, but what type of argument <u>should</u> be used, and the best type of argument is that directed at an actor involved in making a choice, not abstract knowledge that has no policy implication for any specific individual. In addition, unlimited fiat power may detract from an accurate view of the comparison of the

various levels of government. For example, one problem with state governments is that they are not uniform; the use of the fiat power allows debaters to ignore this real world problem, as well as several other problems with state governments.

In addition, viewing fiat as limiting action to one level of government does allow the debaters to evaluate federal vs. state action; only the nature of this comparison changes. A negative team can still argue that states should do something; they merely take on the added burden of proving they will act in a certain way (the same burden a negative would have if they argued industry should do something). The judge then weighs the desirability of having the states act (times the probability that the states will act) against the desirability of having the federal government act (times the probability that the judge can influence the federal government to act). A judge may decide not to act because the states are in a better position to act and federal intervention would prevent their action, but the judge's rejection of the federal action does not adopt the state action; it merely reflects that the advantages of federal action in this area do not outweigh the disadvantages of that action.[13]

The Judge as Agent of Action and Fiat Problems

Past discussion of viewing the judge as an agent of action has emphasized the limitations that such a view would place on the negative team. As with most theories, however, the view of the role of the judge would have implications on other theoretical arguments.

In this case, viewing the judge as an actor would eliminate many of the theoretical problems involving fiat that have troubled theorists; in fact, the ability to eliminate these problems may be a stronger justification for this view of fiat power than the elimination of illegitimate counterplans.

Since the judge acts as a real life audience, fiat becomes a figure of speech.[14] If the judge is the federal government, a number of fiat related arguments become irrelevant. For example, the argument that a plan adopted by fiat is undemocratic would be irrelevant, since the teams are asking the agent to act, and it could be assumed that the judge would adopt the proposed legislation through normal methods. Fiat could not be used to gain a time advantage, since the judge does not act as a superagent, but rather is a real world individual who must follow normal channels for implementing the action advocated by the advocates.

Issues relating to the repeal of a plan or the circumvention of plan provisions would be easily resolved if the judge is viewed as the agent of action. If the judge is the agent of action, to argue that the judge would decide to act and then repeal the plan is a very weak position; a rational judge would have control over both the initial action and the repeal of the plan. While future agents may alter a plan; the judge knows that, unless new circumstances arise, the plan will remain intact in the near future. At the same time, the judge knows that, as long as he/she is in control of the policy, the provisions will not be circumvented, although the protection against circumvention is not guaranteed if the administration of the plan is shifted to another agent (for example, an independent agency).[15] Similarly, a negative team asking about the

motives of the policymaker indicated in the resolution may be raising an interesting psychological question, but the answer to the question will not aid the judge in determining what he/she should do in the future. This view of the judge eliminates the requirement that a team show a policy will be adopted, while at the same time allowing the negative team to argue that external constraints on the individual agent can prevent the policy from working. Rather than being an artificial rule, the viewing of the judge as a specific agent creates a real world analogy that provides clear and easily articulated guidelines for acceptable negative arguments on the workability of a plan based on a model, rather than ad-hoc rules developed only after a theoretical dispute arises.

The questions surrounding the issue of fiat power in a debate round are critical ones for academic debate. The view that a judge takes toward his/her role in the debate will affect not only the response that the judge has to various types of counterplans and justification arguments, but it will also affect the way that a judge reacts to the arguments related to circumvention, the adoption of a plan and a host of other issues. From all of these perspectives, the position that the judge should be the agent specified in the resolution provides a rational approach to the problems raised by the issue of fiat in academic debate.

NOTES

[1]Thomas Isaacson and Robert Branham, "Policy Fiat: Theoretical Battleground of the Eighties," Speaker and Gavel, 17 (Winter, 1980), 84-91.

[2]See Walter Ulrich, "The Agent in Argument: Toward a Theory of Fiat," Debate Issues, 12 (November, 1979), 3-6, and David A. Ling and Robert V. Seltzer, "The Role of Attitudinal Inherency in Contemporary Debate," Journal of the American Forensic Association, 3 (Spring, 1971), 278-283.

[3]Isaacson and Branham, pp. 84-91; John R. Schunk, "Affirmative Fiat, Plan Circumvention, and the 'Process' Disadvantage: The Further Ramifications of Pseudo-Inherency," Speaker and Gavel, 18 (Spring, 1981), 83-87; A.C. Snider, "Fiat Power and International Organizations," Debate Issues, 9 (February, 1976), 1-3; and Russell T. Church, "Fiat Power: An Irrational and Immoral Strategy - A Personal Perspective," in Proceedings, National Conference on Argumentation, edited by James I. Luck (Fort Worth, Texas: Department of Speech Communication, Texas Christian University, August 4-5, 1973), pp. 87-99.

[4]See, Ulrich, pp. 3-6 and Walter Ulrich, "Limitations on the Options Available to the Evaluator of Policy," paper to be presented to the annual convention of the Central States Speech Convention, Milwaukee, Wisconsin, April, 1982.

[5]There are three possible derivations of this theory. One would have the judge act as the total agent (e.g., as congress or the federal government as a whole), another derivation would have the judge act as one member of the total agent (e.g., as one member of congress, or as one individual in the federal government speculating about what should be done), and the third derivation would be to create an artificial entity to act as the agent (e.g., to be a judge on a federal district court hearing, on original jurisdiction, a case concerning governmental policy). While all these formulations of the role of the judge have certain common characteristics, they would differ on the nature of the fiat arguments discussed in the final section of this paper. I have used, in most cases, the first (and, to a lesser extent, the third) view of the role of judge in this paper, although the second view would share many of the same applications, with the possible exception of creating a new perspective on circumvention attacks.

[6]Ulrich, "The Agent in Argument," p. 4.

[7]I recognize that there are some who would suggest that a topical counterplan is a legitimate strategy (see Edward Panetta, "The Topical Counterplan: Reasserting Negative Ground," in Allan L. Louden and Roger E. Solt, Alternatives in Education: Stagnation or Renewal (Winston-Salem: Debater's Research Guide, 1981), pp. 9-12), but this view at this time has few followers. Part of the objections to topical counterplans lies in the role of the topic. If the topic

divides potential ground, a negative team that defends a topical counterplan is defending ground that is not assigned to it. Additionally, topical counterplans encourage clash on minor issues, instead of the major issues suggested by the resolution.

[8]This does not mean that potential actions by other individuals are ignored. Many of the options open to one individual are options that are designed to influence the behavior of other people. Thus, if something needs to be done, I can do it myself, or I can use one of several strategies to persuade someone else to perform the task. Similarly, if the federal government thinks something should be done, they can pass a law requiring the act to be done directly, or they can require the states to pass a similar law, or they can try to persuade the states (or localities or foundations or individuals) to do something. In selecting among those alternatives, however, one considers both the desirability of the end result and the probability that each course of action will be successful.

[9]See Frank Mitchell, "The Boundaries of Governmental Fiat," in Louden and Solt, pp. 12-14, and Isaacson and Branham, p. 88.

[10]One problem that many individuals have is that the reasons given for a "broad" use of the fiat contradict the limits people place on a judge. Thus, if we want to discover the "best" option, why should we limit options to governmental policies? It is not enough for someone to arbitrarily draw a limit to fiat powers without explaining why that limit is consistent with their attacks on my position.

[11]See, for example, Margaret Mead, "A Proposal: We Need Taboos on Sex at Work," Redbook, April, 1978, pp. 31-3. Mead calls for a change in social norms to deal with sexual harassment; a proposal that exceeds even governmental limits to fiat powers.

[12]Mitchell, p. 14.

[13]Some have argued that this view of fiat is not applicable to other judging philosophies (hypothesis testing, a single citizen paradigm, etc.). On the contrary, other judging philosophies reinforce my construction of fiat. Any judging philosophy must place some limits to fiat power, or counterplans involving having the Soviet Union surrender or making criminals nice people would abound. Hypothesis testing confirms this. A hypothesis is negated by refuting the predicate, not the subject. Thus the hypothesis, "Increased use of evidence produces an attitude change" is not negated by proving that "high source credibility produces an attitude change," but only by the counter-hypothesis, "Increased use of evidence does not produce an attitude change." Similarly, a single citizen cannot influence all levels of government; only the federal government and his/her state government (not the government of any other state), nor is the analogy of an individual citizen really that accurate since an individual citizen rarely votes on the basis of a single issue alone.

[14]David Zarefsky, "Argument as Hypothesis Testing," in Advanced Debate: Readings in Theory, Practice and Teaching, second edition, edited by David Thomas (Skokie, Illinois: National Textbook Company, 1979), pp. 427-437.

[15]This does not mean circumvention arguments are irrelevant. If the resolution were, "Resolved, that I should exercise every day," one major issue would be my will-power and my ability to stay with the exercise program. Similarly congress could reject a spending ceiling based on their inability, based on past budgets, to stay within ceilings. The negative team would, however, be required to show that these weaknesses are inherent. See, Ted Rueter, "Circumvention of Affirmation Plans," Debate Issues, 15 (October, 1981, 2-5.